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ABSTRACT

The Assistant Attorney General of the Civil Rights Division, U.S. Department of Justice, reviews the Reagan administration's efforts on behalf of handicapped persons. The government's commitment to the principle of nondiscrimination is discussed along with such actions as designation of the "National Decade of Disabled Persons," the establishment of the National Council on the Handicapped and improved coordination with state and local authorities to enhance accessibility. Also discussed is the development of Uniform Federal Accessibility Standards, designed to be compatible with the 1980 American National Standards Institute provisions. Also noted is the progress with agencies promulgating their own regulations for Section 504 of the Rehabilitation Act of 1973 which protects against discrimination on account of handicap in federally assisted and federally conducted programs. (CL)

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Department of Justice

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REMARKS

OF

THE HONORABLE WM. BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

38TH ANNUAL CONVENTION OF THE
PARALYZED VETERANS OF AMERICA

NEW ORLEANS HILTON HOTEL
NEW ORLEANS, LOUISIANA
AUGUST 17, 1984

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It is a distinct pleasure to be here with you this evening to discuss Civil Rights' Policy and Perspectives. For the last 38 years, this organization has been in the forefront of the fight to end prejudice and discrimination against disabled citizens, and to insure throughout our society equal opportunity for disabled citizens. That is a battle that has long been waged by the Federal Government as well. Through our collective efforts, great strides have been made, but much remains to be done. What I would like to do this evening is to review with you this Administration's continuing efforts to remove those barriers that still stand in the way of a full enjoyment by all Americans of equal treatment in every form of human endeavor.

Civil rights enforcement at the Federal level is not one-dimensional. Unlike many advocates in this area from the private sector--who understandably, and quite appropriately, take on the challenges of one group to the exclusion of others--our responsibility is to see to it that the civil rights of all individuals are protected. As a consequence, little that we do is free from controversy.

Blacks who applaud our recent challenge to a racial quota system, used by a New York apartment complex to limit the number of units to be rented to minorities, are the first, and most vocal, to condemn a Government challenge to similar racial quota systems that unfairly deprive white police and firefighters of equal promotion opportunities. Women's groups which endorse our broad interpretation of "federal financial

assistance" to include Pell Grants that go to students of educational institutions, or medicare and medicaid payments that go to hospitals, are critical of the Administration's efforts to clarify civil rights legislation providing for institution-wide coverage. And, disabled citizens of America, who cheered the Administration's decision not to revise the existing 504 coordination regulations pertaining to "federally assisted" programs, have objected to our issuance of similar prototype regulations and the Department of Justice regulations for "federally conducted" programs.

None of this is surprising. Our society is becoming increasingly diverse, and the delicate balance to be struck among the many competing interests is that much more difficult. Civil rights is not the preserve of a few; it is a haven for all. It belongs not to "protected classes," but to individuals of all classes, many of whom have been denied equal opportunity largely because others have gratuitously put them in what is euphemistically called a "protected class." This Administration does not subscribe to that approach. Our commitment is to the principle of nondiscrimination, a principle that applies no less to disabled Americans than to every other American who suffers the sting of discrimination bacause of race, color, gender, national origin or religion.

And exactly what is the Federal Government doing to advance that principle? Basically, our efforts are concentrated in three areas-education, coordination, and implementation--albeit with differing degrees of intensity.

I am sure you appreciate, far better than I, the need for educating Americans on the realities of being paralyzed--or, indeed, on the realities of any other disability-shared by a significant portion of our citizenry. So much of the prejudice that is responsible for a continuing resistance among some to embrace disabled people as equal partners in our school yards, in our places of work, and even in our neighborhoods, derives from ignorance, misunderstanding and a general misperception of the potential worth of the handicapped person. In order to enhance my own awareness and sensitivity of this reality, sometime ago I spent a day living and working in a wheelchair. It was an experience not to be forgotten.

As a society, we have made some progress in recognizing handicapped individuals on the basis of their talents and capabilities--but not nearly enough. The role of the Federal Government in this educational process has been marginal at best. Yet, this Administration is responsible for some new initiatives. 1982 to 1992 has been declared by President Reagan as the "National Decade of Disabled Persons." By proclamation, the President also designated October, 1982 as "National

Spinal Cord Injury Month" and August 3, 1983, "National Paralyzed Veteran's Recognition Day." This year October 7 through 13 will be observed as National Employ the Handicapped Week."

The President also established the National Council on the Handicapped in order, among other things, to help enhance public awareness of the significant contributions that can be made by handicapped individuals. There is a special White House advisor to the President on handicapped matters, Bob Sweet, who has as one of his responsibilities to raise public perceptions and sensitivities in this area. The Architectural and Transportation Barriers Compliance Board (or ATBCB), of which I was past Chair, has been involved in a number of workshops and conventions around the country to heighten public awareness.

These are, to be sure, modest beginnings, but they represent an important step in the right direction. They mark a Federal appreciation of the need for a viable and continuing educational program--conducted in tandem with organizations such as this one--in order to break down the attitudinal barriers that needlessly impair the perceptions of society, causing too many unfairly to deny to persons who have a disability their right to equal consideration and treatment.

Let me turn to the second part of our program: coordination--and by that I mean improved coordination with state and local authorities in an effort to enhance accessibility to the fullest extent practicable.

This past week saw a significant achievement in the area of coordination of Federal standards and requirements. There is, as you know all too well, a regrettable lack of uniformity in the accessibility requirements imposed by Federal agencies and states and their subdivisions for the benefit of handicapped individuals. While the Federal Government cannot undertake to impose rigid Federal requirements on state and local authorities without overstepping the legislative authority that Congress has given to the several Federal agencies, we can--and should--seek to lead by example.

To do so, however, requires as a first step that we get our own act together. We can hardly expect state and local authorities to follow our lead if the various Federal agencies with responsibilities in these areas cannot agree on appropriate accessibility standards. Nor can we expect to serve as a model if we do agree on such standards, but the standards are broadly inconsistent with those developed by non-Federal entities also concerned with establishing reasonable, general accessibility standards.

The first stage in developing a uniform Federal accessibility standard was the final publication on August 4, 1982, of the minimum guidelines for accessibility standards under the Architectural Barriers Act of 1968. These guidelines, established by the ATBCB, laid the foundation for the second stage, the Uniform Federal Accessibility Standards published on August 7 of this year (at 49 Federal Register 31528) by the four Federal agencies responsible for setting Barriers Act standards. GSA and HUD, two of these standard-setting agencies, simultaneously adopted the Uniform Standards for their administrative regulations; The Department of Defense and the Postal Service, the other two standard-setting agencies, plan to adopt the standards shortly. The Standards, known by the acronym UFAS, are written so as to be readily available to the other Federal agencies with enforcement responsibility for Section 504's nondiscrimination provision in federally assisted programs and therefore can usefully serve government-wide as the standards for new construction and alteration of facilities by entities receiving Federal funds.

UFAS, like the ATBCB's minimum guidelines, is designed to be compatible with the primary non-Federal standard as well, that is the 1980 American National Standards Institute (ANSI) provisions, having been tailored to the extent practicable to these existing standards. This publication thus is a significant step forward in the effort to develop a comprehensive

set of Federal accessibility standards that is fully compatible with similar requirements at the State level and in the private sector.

It is, of course, not enough to emphasize only "education" and "coordination" in the struggle for full equality under law. Strong and active enforcement of the Federal civil rights laws is a third critical element. My earlier reference to this regard was to "implementation" so as to be sure that the term was broad enough to include both court litigation and administrative regulation.

This Administration is understandably proud of its civil rights enforcement efforts on behalf of handicapped persons. As you know, Section 504 of the Rehabilitation Act of 1973 protects against discrimination on account of handicap in federally assisted and federally conducted programs. The trend in recent years has understandably been that a growing percentage of all complaints received by Federal agencies arise under this provision--indeed since 1978 the number has more than doubled. Most of the meritorious complaints are resolved satisfactorily through the agency's negotiation and conciliation process.

The Department of Justice has in place a Section 504 coordination regulation for "federally assisted" programs. As you are well aware, when this Administration came into office--despite the fact that Section 504 had been on the books for eight years--there were still agencies that had not promulgated their own "federally assisted" regulations in conformance with those of the Department. The PVA and the Department of Justice have both strived to correct that situation. This organization took action through the courts. In PVA v. Smith a California District Court ordered nine agencies to proceed in finalizing their "federally assisted" regulations on an expedited basis. At our insistence, today all federal agencies, with one exception, have final rules for their "federally assisted" programs.

Likewise, significant progress has been made with regard to the "federally conducted" regulations. Once again, through another lawsuit, Williams v. USA, the PVA urged the Court to compel promulgation of the "federally conducted" regulations. In order to aid in that process, the Justice Department, as lead agency for Section 504 enforcement coordination, developed and distributed its own prototype "federally conducted" regulation for use as guidance by the other agencies. It is remarkable to me that virtually no regulatory effort had occurred in this area since 1978 when

Congress first extended Section 504's coverage to "federally conducted" programs. Whatever the reason for that inattention, our lengthy review of Section 504 in connection with "federally assisted" programs prompted us to track closely existing 504 regulatory requirements in fashioning prototype standards for "federally conducted" programs.

So far, twenty-one agencies have published Section 504 regulations in the Federal Register for comment. The Civil Rights Division has received and reviewed over 35 additional proposed rules. The final regulations of the Department of Justice have been forwarded to the Equal Employment Opportunity Commission and the Office of Management and Budget for review. These final regulations should be published in the near future. We have contacted the remaining Executive agencies to speed their regulatory development. Congress' extension of Section 504 to Federal agencies will have only limited meaning until these regulations are issued. We are therefore committed to expediting the process and will continue to prod the Federal Executive Branch to action in this area.

There have also been strides in the legislative arena during the terms of this Administration. Last year President Reagan signed the "Vietnam Veterans' Emergency Jobs Training Act of 1983" providing for employment assistance for Vietnam

and disabled veterans. The Voting Accessibility Act will soon be going to his desk for signature and I have personally been involved in working with members of Congress to clarify the language of the Civil Rights Act of 1984 to provide for institution-wide coverage under federally assisted programs.

Our efforts on the litigation front have also been effective. The Federal government's amicus participation in the Supreme Court case of Consolidated Rail Corporation v. Darrone, is high on the list of accomplishments. Conrail is the first Supreme Court case involving Section 504 as it applies to employment. In Conrail, the government took the position that Section 504 forbids employment discrimination in all federally assisted programs, irrespective of whether a primary purpose of the Federal funding was to promote or assist employment. We also argued that Section 504 may be enforced by a private right of action and that such compensatory relief as back pay was available to private plaintiffs in such a lawsuit.

The Court held that the protections of Section 504 are not limited to those situations where a primary purpose of the Federal grant program is to provide employment. Following another of its recent decisions (Guardians), it also held that back pay was available as a remedy for intentional discrimination. I am proud to have presented the argument of the Federal Government in the Supreme Court and to have been

able to contribute to the Court's unanimous vindication of the interests of handicapped persons under Section 504. I might note parenthetically that the Federal government has steadfastly remained an ally of disabled people on the employment issue, maintaining its view of broad employment coverage even in the face of contrary decisions by four circuit courts of appeal. It is always nice to be told by the Highest Court that you were right all along.

Conrail could prove a hollow victory for us, however, if its expansive view of employment coverage is undercut by too limited an interpretation of the substance of nondiscrimination. This is brought home in the case of Nelson v. Thornburgh, which will, I believe, grow in stature as an important precedent on interpreting what is meant by "reasonable accommodation" under Section 504. In Nelson, we filed friend-of-the-court briefs in both the Federal district court and the Third Circuit Court of Appeals, arguing that Section 504 requires the State of Pennsylvania to provide readers at state expense to blind case workers in the Pennsylvania welfare department.

The District Court agreed with our analysis, and ruled in favor of the plaintiffs. That decision was affirmed by the Third Circuit. Pennsylvania has petitioned the Supreme Court to review the case, and Nelson thus has the potential for becoming the first Supreme Court case to address the substance of Section 504 in the employment area.

Nelson, of course, represents an instance--one of many, I might add--where cost considerations will not justify excusing the state from adopting measures to ensure program accessability. I think the case represents the kind of thoughtful analysis we can expect from the courts in the future to ensure meaningful accommodation of handicap interests in enforcing Section 504. This Administration's stand in these cases underscores our belief--shared by all in this room--that the command of nondiscrimination in Section 504 compels equal treatment for all.

That is, of course, the ideal yet to be fully attained; to realize that under law there are no first class citizens and second-class citizens in this country; no preferred groups and non-preferred groups; but rather that we are all individuals, with unique characteristics, capabilities and talents, each entitled to the same opportunities as are afforded to all others. You and I have had differences from time to time as to how best to achieve that desired end--and we may well find ourselves in disagreement again. But, my experience in the Civil Rights Division over the past several years has impressed upon me how critically important it is that we not let controversy cloud our common commitment to the goal of equal opportunity for all Americans. We can accomplish far more by working together than by working

against each other. It is therefore important that collectively we renew the efforts already underway--through education, coordination and implementation--to hasten the day when the promise of full equality for all without regard to race, color, gender, religion or national origin--and without regard to whether a person is or is not handicapped becomes the reality that has for so long been a part of all our dreams.

Thank you.